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21 December 1966

U. S. Government  
Washington, D. C.

Attention: Contracting Officer

Subject: Modulated Light Film Viewer

Task Order No. 2 (100,677)65R

Reference: a) U. S. Government Ltr. dated 22 July 1966  
b) [ ] Ltr. dated 19 April 1966  
c) [ ] Ltr. dated 29 July 1966

Gentlemen:

In Reference a) you denied the [ ] request for additional funds to cover costs incurred in the performance of the subject contract and cited as your reasons for denial, [ ] initial request for additional funds (evidencing familiarity with the Limitation of Cost Clause), an agreement to absorb a certain amount of cost, and Modification I which allegedly represented the total cost of contract performance and which was signed without exception. These points will be discussed in order.

When the subject program was reviewed by the Contracting parties at the February 8, 1966 meeting, [ ] presented a history of direct costs incurred and to be incurred in supplying Prototypes I and II. It was shown that the total contract cost would be about [ ]. It was shown that, in addition to monies already spent, [ ] would be needed to complete performance. The Contracting Officer's duly authorized representative indicated that these costs would have to be reviewed. However, he told [ ] to continue with its present work schedule, as planned, but not to make any new commitments until direction was received from the Government. [ ] was

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in an overrun position at the time it was advised to continue and the Contracting Officer's representative was aware of that fact. Under the circumstances in which this advice was given, it could be held that the need to comply with the provisions of the Limitation of Cost clause was waived. It could also be held that the Government accepted the overrun costs incurred.

These overrun costs are not and cannot be considered synonymous with the costs which [ ] in negotiations leading to the creation of Modification I, agreed to absorb. The latter were in specific amounts -- [ ] for work on a flat-faced tube and pantagraph; and [ ] agreed to in the November 1965 meeting.

The signing of Modification I without exception cannot be considered a bar to consideration of the overrun claim. That agreement reflected a meeting of the minds based on the facts available at the time negotiations were held -- October 1965. The Modification does not purport to be nor was it intended to be a complete settlement of any and all claims outstanding at the time it was executed -- January 1966.

[ ] is anxious to deliver and it is assumed the Government is anxious to receive the equipment developed under the subject contract. [ ] therefore requests a meeting with the cognizant Government personnel to amicably resolve the problems which have arisen.

Very truly yours,

ORIGINAL SIGNED BY

Contract Negotiation and Administration

awp

cc: Technical Representative